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17 Attorneys for Plaintiffs
18 CORY SPENCER, DIANA MILENA
REED, and COASTAL PROTECTION
RANGERS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

23 CORY SPENCER, an individual;
24 DIANA MILENA REED, an
individual; and COASTAL
25 PROTECTION RANGERS, INC., a
California non-profit public benefit
26 corporation.

Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**DECLARATION OF LISA M.
POOLEY IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
INDIVIDUAL DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

1 v.

2 LUNADA BAY BOYS; THE
3 INDIVIDUAL MEMBERS OF THE
4 LUNADA BAY BOYS, including but
5 not limited to SANG LEE, BRANT
6 BLAKEMAN, ALAN JOHNSTON
7 AKA JALIAN JOHNSTON,
8 MICHAEL RAE PAPAYANS,
9 ANGELO FERRARA, FRANK
10 FERRARA, CHARLIE FERRARA,
11 and N. F.; CITY OF PALOS VERDES
12 ESTATES; CHIEF OF POLICE JEFF
13 KEPLEY, in his representative
14 capacity; and DOES 1-10,

15 Defendants.

Judge: Hon. S. James Otero
Date: September 5, 2017
Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

13
14 I, Lisa M. Pooley, declare as follows:

15 1. I am an attorney duly admitted to practice before this Court. I am a
16 partner with Hanson Bridgett LLP, attorneys of record for Plaintiffs CORY
17 SPENCER, DIANA MILENA REED, and COASTAL PROTECTION RANGERS,
18 INC. I have personal knowledge of the facts set forth herein, except as to those
19 stated on information and belief and, as to those, I am informed and believe them to
20 be true. If called as a witness, I could and would competently testify to the matters
21 stated herein.

22 Initial Efforts To Schedule Defendant Johnston's Deposition

23 2. On June 7, 2017, I contacted Defendant Alan Johnston's attorney,
24 Patrick Carey, and advised him that Plaintiffs wanted to take Mr. Johnston's
25 deposition. I asked for dates that Mr. Johnston and his attorney were available in
26 June. In response, Mr. Carey advised that Mr. Johnston was out of the country, but
27 he had contacted Mr. Johnston and asked him to schedule a time as soon as possible
28 to come back for his deposition.

1 3. Later on June 7, 2017, Mr. Carey informed me that Mr. Johnston was
2 "booked for work through July" and "has a flight scheduled for August 17th." Mr.
3 Carey stated that Plaintiffs could choose any date that week for his deposition.

4 4. On June 8, 2017, I responded to Mr. Carey explaining that waiting over
5 two months to take Mr. Johnston's deposition was not feasible for Plaintiffs. I
6 inquired if Mr. Johnston was working remotely until August 17, where he was
7 flying in from, and whether he could not make himself available on some date in
8 June.

9 5. Mr. Carey responded that Mr. Johnston "spends most of his time
10 traveling internationally for VAST," that he currently was in Taiwan "working for
11 VAST Life Taiwan," and that he was advised that Mr. Johnston could not make it
12 back until August 17. Mr. Carey proposed an international video deposition.

13 6. In response to Mr. Carey, I reminded him that discovery closes on
14 August 7. I also advised that Plaintiffs preferred to take Mr. Johnston's deposition
15 in person, as they are entitled to do. I also stated that I was unsure of Mr. Johnston's
16 employment position, but as a party to this lawsuit, he needed to appear for his
17 deposition upon reasonable notice. I stated that if Mr. Johnston did not agree to
18 appear for his deposition in June, then a conference with Magistrate Judge Oliver
19 would be necessary to resolve the issue. Mr. Johnston did not agree.

20 First Hearing Regarding Mr. Johnston's Deposition

21 7. On June 15, 2017, Magistrate Judge Oliver held a telephonic hearing.
22 After hearing from each party, the Court indicated that if Mr. Johnston was saying
23 he had no date available for his deposition before the close of discovery, then
24 Plaintiffs should proceed with noticing his deposition and, if Mr. Johnston did not
25 appear as noticed, then Plaintiffs would need to follow procedures to compel his
26 attendance. During the hearing, Mr. Carey clarified that Mr. Johnston is not an
27 employee of VAST, but rather he is "sponsored" by this surf company.

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1 8. After the hearing, Magistrate Judge Oliver issued an Order directing the
2 parties to meet and confer in good faith and, if unable to reach a resolution, to
3 schedule a telephonic conference with the Court. (Dkt. 251.)

4 Continued Efforts To Schedule Defendant Johnston's Deposition

5 9. Later on June 15, 2017, Mr. Carey advised me that he had left a
6 message for Mr. Johnston telling him that he must choose a date to come home as
7 soon as possible or Plaintiffs simply would notice his deposition. I advised that
8 Plaintiffs intended to notice Mr. Johnston's deposition, given the delay in scheduling
9 thus far, the impending discovery deadline, and counsel's calendar. But I also stated
10 that Plaintiffs would consider a proposed alternative date on which Mr. Johnston
11 agreed to appear, should he do so. Plaintiffs noticed Mr. Johnston's deposition for
12 June 30, 2017. (Attached hereto as **Exhibit 1** is a true and correct of Plaintiffs'
13 Notice of Deposition of Defendant Alan Johnston, dated June 15, 2017.)

14 10. On June 19, 2017, I contacted Mr. Carey attorney to inquire if he had
15 communicated further with Mr. Johnston about his return. Mr. Carey stated that Mr.
16 Johnston "could not make it back for 6/30/17" and he was "still working on it."

17 11. On June 20, 2017, Mr. Carey informed me again that Mr. Johnston
18 could not make it back for his deposition on June 30. Mr. Carey stated that the
19 "only break" in Mr. Johnston's schedule is on July 11. Mr. Carey that he was trying
20 to arrange something around that date and urging Mr. Johnston to arrange a break
21 and book travel home.

22 12. On June 21, 2017, I informed Mr. Carey that because Mr. Johnston had
23 not agreed to appear for his deposition on a mutually-agreeable date, Plaintiffs were
24 not taking the June 30 deposition off calendar. I advised that if Mr. Johnston did not
25 appear for his deposition as noticed, then Plaintiffs would move to compel his
26 deposition and seek sanctions for his failure to appear.

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1 After Plaintiffs Requested A Second Hearing With The Court, The Parties
2 Continued To Meet And Confer As Ordered

3 13. On June 26, 2017, I contacted the Court to request a telephonic hearing
4 concerning Mr. Johnston's deposition. The Court issued an Order directing the
5 parties to meet and confer one more time regarding this dispute and, if not resolved,
6 to submit letter briefs to the Court. (Dkt. 255.)

7 14. Later that day, Mr. Carey advised me that he "may have Mr. Johnston
8 secured for 7/28/27 deposition," but he could not "100% confirm." He said he
9 hoped to hear from Mr. Johnston shortly. (Mr. Carey made no further mention of
10 Mr. Johnson's "break in his schedule" on July 11.)

11 Final Meet And Confer Proposals

12 15. On June 27, 2017, I met and conferred with Mr. Carey again as ordered
13 by the Court, but we did not resolve the matter.

14 16. Mr. Carey proposed that Mr. Johnston's deposition proceed on July 28,
15 although he had not received confirmation from Mr. Johnston yet that he would
16 return to the country for his deposition on that date.

17 17. In response, I explained that waiting until July 28, even assuming that
18 Mr. Johnston agreed to appear on that date, would put Plaintiffs at an unfair
19 disadvantage given that: (1) Mr. Johnston's testimony might be relevant and
20 necessary to oppose the two defense summary judgment motions, which Plaintiffs
21 had been advised would be filed against them (and which had to be filed by July 24,
22 at the latest)¹ and (2) Plaintiffs likely would have insufficient time before the close
23 of discovery on August 7, 2017 to compel testimony from Mr. Johnston, should they
24 need to do so based on his responses at his deposition. I proposed that Mr. Johnston

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27 ¹ Since then, all Defendants have filed summary judgment motions.
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1 appear at his deposition on June 30, as noticed, and, if he would not, then he appear
2 for his deposition the following week, the week of July 3.

3 The Court's Order Following Letter Briefs From The Parties

4 18. On June 28, 2017, I submitted a letter brief to Magistrate Judge Oliver
5 concerning Mr. Johnston's deposition. (Dkt. 256.)

6 19. On June 30, 2017, Mr. Carey submitted a letter brief to Magistrate
7 Judge Oliver concerning Mr. Johnston's deposition. (Dkt. 257.)

8 20. On June 30, 2017, Magistrate Judge Oliver issued an Order for Mr.
9 Johnston to appear for his deposition on July 28, 2017. (Dkt. 258.)

10 Defendants' Motion For Summary Judgment

11 21. On July 14, 2017, Defendants City of Palos Verdes Estates and Chief
12 of Police Jeff Kepley filed a motion for summary judgment or, in the alternative,
13 summary adjudication. (Dkt. 268.) Plaintiffs' opposition to this motion is due today
14 July 31, 2017, despite Defendant Johnston's deposition being ordered to take place
15 on Friday, July 28, 2017.

16 Defendant Johnston's Deposition

17 22. On July 28, 2018, I took the deposition of Defendant Johnston in
18 Irvine, California. Mr. Johnston was first duly sworn to testify by a certified
19 shorthand reporter, Melisa Russie. Although on July 28, 2017, I requested an
20 expedited transcript from Ms. Russie, I have not received it yet. Ms. Russie advised
21 me that the earliest that I could receive an email copy of Mr. Johnston's deposition
22 transcript is August 1, 2017, and the earliest that I could receive a hard copy of it is
23 August 2, 2017. I therefore expect Mr. Johnston's deposition transcript tomorrow
24 via email from Ms. Russie and a hard copy on August 2, 2017.

25 23. Mr. Johnston testified during his deposition about his interactions with
26 the Palos Verdes Estates Police Department. He also testified about his frequent
27 alcohol consumption and marijuana use at Lunada Bay, as well as his regular

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1 cooking and barbeques at Lunada Bay, for which the Palos Verdes Police have
2 never cited him or asked him to stop.

3 24. Mr. Johnston also testified during his deposition about his availability
4 in June 2017, which suggests he could have appeared for his deposition prior to July
5 28, 2017. Mr. Johnston testified that he did not know that his deposition had been
6 requested in June and did not know that Plaintiffs had served a notice for his
7 deposition to take place on June 30, 2017.

8 25. Mr. Johnston also testified during his deposition about his personal use
9 of a laptop computer, a desktop computer, and several external hard drives, which
10 he admittedly did not search to determine if they contained any materials responsive
11 to discovery requests in this case.

12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct.

14 Executed on this 31st day of July, 2017, at San Francisco, California.

Lisa M Pooley

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EXHIBIT 1

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19 CORY SPENCER, DIANA MILENA
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RANGERS, INC.

24 CORY SPENCER, an individual;
25 DIANA MILENA REED, an
individual; and COASTAL
26 PROTECTION RANGERS, INC., a
California non-profit public benefit
27 corporation.

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' NOTICE OF
DEPOSITION OF
DEFENDANT ALAN JOHNSTON**

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

Case No. 2:16-cv-02129-SJO (RAOx)

1 Plaintiffs,

2 v.

3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
6 not limited to SANG LEE, BRANT
7 BLAKEMAN, ALAN JOHNSTON
8 AKA JALIAN JOHNSTON,
9 MICHAEL RAE PAPAYANS,
10 ANGELO FERRARA, FRANK
11 FERRARA, CHARLIE FERRARA,
12 and N. F.; CITY OF PALOS
13 VERDES ESTATES; CHIEF OF
14 POLICE JEFF KEPLEY, in his
15 representative capacity; and DOES
16 1-10,

17 Defendants.

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 Please take notice that on June 30, 2017 at 9:00 a.m., Plaintiffs Cory
20 Spencer, Diana Milena Reed, and the Coastal Protection Rangers, Inc.
21 ("Plaintiffs") will take the deposition of Defendant Alan Johnston at Premier
22 Business Center, One Park Plaza, Suite 600, Irvine, CA 92614,
23 (949) 852-4400. The deposition will be taken from day to day thereafter until
24 completed.

25 NOTICE IS FURTHER GIVEN that the deposing party intends to
26 cause the proceedings to be recorded stenographically through the instant

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1 visual display of the testimony and will also be recorded by videotape and
2 audiotape.

3 DATED: June 15, 2017

HANSON BRIDGETT LLP

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By:

KURT A. FRANKLIN
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CORY SPENCER, DIANA MILENA
REED, and COASTAL PROTECTION
RANGERS, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On June 15, 2017, I served a true copy of the following document(s) described as:

**PLAINTIFFS' NOTICE OF DEPOSITION OF
DEFENDANT ALAN JOHNSTON**

10 on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or
13 package addressed to the persons at the addresses listed in the Service List
14 and placed the envelope for collection and mailing, following our ordinary
15 business practices. I am readily familiar with Hanson Bridgett LLP's practice
for collecting and processing correspondence for mailing. On the same day
that correspondence is placed for collection and mailing, it is deposited in
the ordinary course of business with the United States Postal Service, in a
sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 15, 2017, at San Francisco, California.

Ann D. Ghiorso
Ann D. Ghiorso

SERVICE LIST

Spencer, et al. v. Lunada Bay Boys, et al.
(Case #2:16-cv-02129-SJO (RAOx))

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